

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

FILED
JUN 14 2016
Clerk, U.S. District Court
District Of Montana
Missoula

KERMIT POULSON,

Petitioner,

vs.

DAVID PENTLAND, et. al.,

Respondents.

CV 16-27-H-DLC-JTJ

ORDER

United States Magistrate Judge John Johnston entered his Order, Findings and Recommendations in this matter on May 17, 2016, recommending dismissal of Petitioner Kermit Poulson's ("Poulson") writ for a petition of habeas corpus under 28 U.S.C. § 2254. Poulson failed to timely object to the Findings and Recommendations, and so waived his right to de novo review of the record. 28 U.S.C. § 636(b)(1)(C). This Court reviews for clear error those findings and recommendations to which no party objects. *See McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000) (citations omitted).

Having reviewed the Findings and Recommendations, the Court finds no clear error in Judge Johnston's conclusion that Poulson's petition should be dismissed because: (1) the Court lacks jurisdiction over Poulson's claims because his petition fails to allege that he is in custody in violation of the Constitution or laws or treaties of the United States pursuant to 28 U.S.C. § 2254(a); and (2) Poulson has failed to show that he has exhausted all available state judicial remedies pursuant to 28 U.S.C. 2254(b)(1)(A).

Accordingly, IT IS ORDERED that:

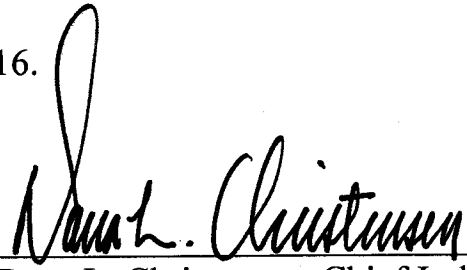
(1) Judge Johnston's Findings and Recommendations (Doc. 3) are ADOPTED IN FULL.

(2) Poulson's petition (Doc. 1) is DISMISSED for lack of jurisdiction and failure to exhaust state judicial remedies.

(3) The Clerk of Court is directed to enter, by separate document, a judgment of dismissal.

(4) A certificate of appealability is DENIED.

Dated this 14th day of June, 2016.


Dana L. Christensen, Chief Judge
United States District Court